IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 719 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AGRICULTURAL PRODUCE MARKET COMMITTEE-WAKANER & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 - 2.MRS RANJAN B PATEL for Petitioner(s) : 1 - 2.
Mr. Dipen Desai, Asst.GOVERNMENT PLEADER for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 05/05/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order

dated 7.1.2006 passed by the State Government, Agricultural and Cooperation Department, Gandhinagar in superseding the petitioner No.1, Agricultural Produce Market Committee, Wankaner (hereinafter referred to as “Committee”) in exercise of powers under Section 46(1) of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as “the Act”) and appointing the District Registrar, Rajkot, as 'Administrator' of the said Committee in exercise of powers under Section 46(2) of the Act.

2. After holding necessary inquiry under Section 44 of the Act and on prima facie opinion that the office bearers of the Market Committee have abused their powers by appointing close relatives of the Directors as 'daily wagers' and continuing them for 7 years without there being any sanctioned post and/or without obtaining any prior approval of the State Government/Director and therefore the petitioner Market Committee was served with show cause notice dated 29th April 2005 and was directed to show cause why the Market Committee should not be

superseded in exercise of powers under Section 46(1) of the Act and why an Administrator should not be appointed under Section 46(1) of the Act. It was alleged in the show cause notice that the appointments are required to be made after inviting applications from the public at large and/or from the Employment Exchange and/or by publishing necessary advertisements and instead of that the appointments are made on daily wage basis by resolution; even without meeting with the requirement of educational qualifications; when there is no provision in the recruitment rules to appoint daily wagers and/or seasonal employees; and appointments are made of only close relatives of the Directors beyond the sanctioned staff schedule. The petitioner Market Committee challenged the said show cause notice by way of Special Civil Application No. 10161 of 2005 before this Court and learned Single Judge of this Court by order dated 17th June 2005 disposed of the said Special Civil Application by relegating the petitioner to participate in the proceedings initiated by show cause notice dated 29th April 2005.

This Court further ordered that in event of final order that may be passed by the respondent being adverse to the petitioner it would not be implemented for a period of 15 days from the date of its communication to the petitioner and accordingly the respondent was permitted to proceed further with the proceedings initiated vide show cause notice dated 29th April 2005. It appears that thereafter the petitioner Market Committee through their members submitted reply to the show cause notice dated 16th November 2005 and after considering the same and affording opportunity to the petitioners the impugned order came to be passed by the State Government dated 7.1.2006 superseding the petitioner No.1 Market Committee in exercise of powers under Section 46(2) of the Act and appointed District Registrar, Rajkot as 'Administrator' of the petitioner No.1 Market Committee in exercise of powers under Section 46(1) of the Act by holding that the Market Committee has defaulted in performing their duties imposed on it; failed to perform its statutory duties under the Act; caused financial loss to the Market Committee; and

the Market Committee and its Directors have abused their powers by acting arbitrarily and have indulged into irregularities. Being aggrieved and dissatisfied with the order passed by the State Government dated 7.1.2006 in superseding the petitioner No.1 Market Committee and appointing District Registrar as 'Administrator' of the Market Committee, the petitioners have preferred the present petition under Article 226 of the Constitution of India.

3. Shri BS Patel, learned advocate appearing on behalf of the petitioners, has vehemently submitted that in the facts and circumstances of the case and looking to the allegations levelled against the petitioner Market Committee the order passed by the State Government superseding the Market Committee in exercise of powers under Section 46(1) of the Act is too harsh. He has further submitted that in fact the daily wagers were appointed by Resolution dated 12th October 1998; thereafter there was fresh election in the year 2002 and the new Market Committee was

constituted; thereafter Directors were elected; and therefore for the alleged act prior to the fresh election the present Market Committee could not have been superseded. He has also further submitted that even after the appointments the list was sent to the Registrar and the said system continued for 8 years and therefore for the conduct of the earlier Market Committee the present Market Committee should not have been superseded. He has further submitted that the impugned decision has been taken on the basis of the report submitted under Section 44 of the Act and the petitioner Committee and/or their members were not given copy of the report under Section 44 of the Act and therefore the impugned order is in breach of principles of natural justice. He has further submitted that in fact looking to the need and the administrative exigencies as the additional land/property being taken on lease at Chandrapur road additional staff was required for the auction of cotton and therefore the daily-wagers were appointed and in fact by continuing and appointing the daily wagers lesser amount of salary is paid and there is

no loss to the Market Committee. He has further submitted that if regular staff were to be appointed much more amount was required to be paid by way of salary against which by appointing daily wagers lesser amount is paid and therefore there is no loss to the Market Committee. He has further submitted that even by subsequent resolution dated 30th April 2005 all daily wagers are terminated; in fact there are no recruitment rules and/or recruitment procedure which was required to be followed for appointment of daily wagers/seasonal workers; and therefore it cannot be said that the Market Committee has acted contrary to the known recruitment procedure. He has further submitted that while passing the impugned order the reply submitted by the Market Committee and their members have not been considered at any point of time and/or entire reply has not been considered and/or it is not the case of the respondents that they have considered the reply submitted by the petitioners. It is submitted that considering the facts and circumstances of the case, the drastic action of supercession of the Market Committee should

not have been taken by the respondents and the grounds mentioned in the show cause notice and the allegations made against the petitioner Market Committee cannot form basis of supercession of democratically elected Market Committee. It is

therefore requested to allow the present Special Civil Application.

4. The Special Civil Application is opposed by the State Government. An affidavit-in-reply is filed on behalf of the State Government. Shri Dipen Desai, learned AGP, while opposing the present Special Civil Application, has submitted that though in the show cause notice the report under Section 44 was referred to at no point of time the petitioners have demanded the copy of the said report. Under the circumstances it is now not open for the petitioners to contend that as the report under Section 44 of the Act was not supplied the impugned order is in breach of principles of natural justice. He has further submitted that the report was relied upon under

Section 44 of the Act to arrive at a conclusion whether any further proceeding under Section 46 of the Act should be initiated or not, and considering the report under Section 44 of the Act the State Government thought it fit to initiate proceedings under Section 46 of the Act and issued show cause notice making specific allegations and charges against the Market Committee to which the petitioners replied, and therefore merely because the report on the basis of which the show cause notice was issued is not supplied to the petitioners it cannot be said that the impugned decision is in breach of principles of natural justice. He has further submitted that appointments of daily wagers made of the close relatives of the Directors was beyond the sanctioned strength and without prior permission of the competent authority, and it was done only with a view to see that they are not required to follow the regular recruitment process. He has further submitted that even no proposal was made by the Market Committee for increasing the strength of staff till 2005 and the Market Committee continued to

appoint the close relatives of the Directors as daily-wagers by resolutions only and if the Market Committee would have sent the proposal earlier for increase of staff strength and the same would have been granted, in that case the Market Committee was required to follow the recruitment process for filling-up the regular additional sanctioned staff by inviting applications, by giving advertisement in newspapers and/or calling names from the Employment Exchange and to avoid that procedure, the proposal was not sent by the Market Committee till 2005 and continued to appoint the close relatives as daily wagers by back-door entry. He has further submitted that though initial appointments were made in 1998, even after fresh election in the year 2002 the present Market Committee and the Directors continued to appoint those close relatives of the Directors and even a further resolution came to be passed by the present Market Committee to appoint/continue close relatives of the Directors as daily wagers and therefore the contention on behalf of the petitioners, that for the act of earlier Market

Committee/office bearers, no action should be taken against the present Market Committee, has no substance. He has further submitted that merely because subsequently on issuance of show cause notice the daily wagers are terminated, is no ground not to take any action for the misdeeds and abuse of power by the Directors/Market Committee. It is further submitted by him that it is not disputed by the petitioners that close relatives of the Directors are not appointed as daily wagers and therefore in absence of any denial that the daily wagers who were appointed are not close relatives of Directors, the State Government has rightly formed the opinion that the Market Committee and their office bearers have abused their powers and the Market Committee has rightly been superseded and an Administrator is rightly appointed. It is further submitted that the reply submitted by the Market Committee has been considered and in view of the above there is no denial that close relatives are not appointed as daily wagers and that as appointments were made beyond the sanctioned strength of staff/schedule and

without prior permission of the competent authority, the only conclusion which can be arrived at is that the Market Committee has abused their powers by acting contrary to the rules and regulations and failed in their discharge of statutory duties and therefore it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. The first contention on behalf of the petitioners is that while issuing the show cause notice and passing the impugned order the State Government has relied upon report under Section 44 of the Act but a copy of the report is not supplied to the petitioners and therefore the impugned order is in breach of principles of natural justice. At the outset, it is required to be noted that in the show cause notice itself, there was a reference to the Report under Section 44 of the Act, and despite such reference the petitioners thought it fit not to ask for a copy of the same and file reply to the show cause notice and allowed the authority to

pass order. Therefore, now it is not open for the petitioners to contend that as the report under Section 44 was not supplied the impugned order is in breach of principles of natural justice. Even otherwise, it is required to be noted that on the basis of the report under Section 44 of the Act having prima facie found against the petitioners it was decided by the State Government to initiate proceedings under Section 46 of the Act and a show cause notice came to be issued with specific charges and allegations against the petitioners, and the petitioners replied to the said show cause notice. On the basis of the enquiry under Section 44 of the Act and the report, the proceedings came to be initiated under Section 46 of the Act and the petitioners were given ample opportunities to reply to the specific charges and allegations against them. Therefore, merely because a copy of the report under Section 44 of the Act, on the basis of which further proceedings under Section 46 of the Act came to be initiated, was not given to the petitioners, it cannot be said that the impugned order is in breach

of principles of natural justice as non-supply of a copy of the Report under Section 44 of the Act has not caused any prejudice to the petitioners. As stated above, subsequently in the show cause notice specific charges and allegations were made against the petitioners and the petitioners were given opportunities to meet with the charges and allegations levelled against them.

6. The next contention on behalf of the petitioners is that due to administrative exigencies and on account of purchase of a new plot for auction of cotton additional staff was required and therefore it was decided to appoint daily wagers in the year 1998 by the earlier Committee which practice continued for 8 years and in view of appointment of new Committee pursuant to fresh election because of alleged act of former Market Committee, the present Committee ought not to have been superceded. It is also the contention on behalf of the petitioners that there are no recruitment rules so far as appointments of daily wagers are concerned and by continuing

and/or appointing daily wagers, there is no loss caused to the Market Committee and on the contrary the Market Committee is benefitted by paying less wages to the daily wagers. It is required to be noted that for the purpose of appointment of staff on daily wages, the petitioners relied upon the Resolution passed on 12.10.1998. On going through the same, it appears that the President of the Market Committee was authorised to make appointment of Chowkidars, Safai Kamdars, Head Clerks etc., on temporary basis. It is required to be noted at this stage that if the Market Committee was of the opinion that there is requirement of more staff, then they could have approached the competent authority for sanction of additional staff, but no efforts were made by the Market Committee to get the staff enhanced till 2005. It is not in dispute that close relatives of the Directors of the Market Committee are appointed on daily wages and that too they were continued for 8 years till the show cause notice came to be issued, and not only that but they were continued/further appointed as daily wagers by the

present Market Committee also by passing a fresh resolution in the year 2004. It is not in dispute that if the appointment of sanctioned staff in the establishment on regular basis is to be made by the Market Committee, it is required to be made by inviting applications from the public at large by giving public advertisement in newspapers and/or calling for names from the Employment Exchange and that too on prior approval of the competent authority. In order to avoid such recruitment process, the Market Committee continued to appoint the close relatives of its Directors on daily wages under the guise that there is no procedure which is required to be followed for appointment of daily wagers. It is also required to be noted at this stage that the so-called necessity to have daily wagers due to establishment of new Market Yard is also an eye wash as in the resolution dated 11.9.2004 itself it is mentioned that the sale in the new Market Yard is to commence from 13.9.2004 whereas the close relatives were appointed in 1998 and they were continued even after present body came after fresh

election in 2002. This is nothing but abuse of powers by the Directors of the Market Committee and the Market Committee. The petitioners have never disputed and/or denied that the close relatives of the then Directors of the Market Committee and/or the existing Directors of the Market Committee are not appointed and/or continued as daily wagers. Therefore, merely because there is no loss (if at all), it cannot be said that the Directors of the Market Committee have not abused their powers. Considering the above, the State Government has rightly formed an opinion that the Market Committee and their Directors have abused their powers and not performed their statutory duties and acted arbitrarily. It is required to be noted that after the show cause notice, the Market Committee applied for sanction of additional staff and the competent authority considering the same granted sanction of additional staff also. If such a proposal would have been made earlier, then the competent authority would have considered the same earlier. As stated above, only with a view to see that close relatives

are continued as daily wagers and to avoid following the regular selection procedure, no request was made by the Market Committee to sanction the additional staff. This was the malafide intention on the part of the office bearers of the Market Committee and the Directors. It is required to be noted at this stage that even daily wagers were continued on certain posts such as Head Clerks etc., though such posts are not in existence at all. It is also the allegation that even educational qualifications are also given a go-by, and it is submitted by Shri Dipen Desai, the learned AGP that as the Market Committee had not produced relevant material with regard to educational qualifications of those persons, it is not possible for the State Government to come to a specific conclusion with regard to the same. It is also required to be noted that the daily wagers continued in their appointment for 8 years and all or most of the daily wagers are close relatives of the former Directors and/or existing Directors of the Market Committee. Considering the above, if action is taken of superseding the Market Committee and

appointing an Administrator in exercise of powers under Section 46 of the Act, it cannot be said that there is any illegality committed by the State Government and/or the action taken or the order passed by the State Government is so illegal and/or contrary to law and/or arbitrary which requires interference of this Court in exercise of powers under Article 226 of the Constitution of India.

7. The contention on behalf of the petitioners, that subsequently all the daily wagers are terminated with effect from 30th April 2005 and therefore no action should be taken, has no substance, for the reason that subsequent termination of daily wagers is no ground not to take any action for the earlier misdeeds committed. It appears that the said action

had been taken after initiation of proceedings under Section 44 of the Act.

8. For the reasons stated above, and more particularly when it is not denied by the petitioners

that close relatives of the Directors are not appointed, there being no substance in the present Special Civil Application, the same deserves dismissal and the same is accordingly dismissed. The ad-interim relief granted earlier requires to be vacated forthwith. Notice is discharged, however, there will be no order as to costs.

8.1. At this stage, Shri BS Patel, learned advocate appearing on behalf of the petitioners, requested to continue the ad-interim relief so as to enable the petitioners to challenge the present order before the higher forum, by submitting that the term of the present Market Committee is to expire on 7.5.2006 and election will be declared for the purpose. In the facts and circumstances of the case, the ad-interim relief granted is directed to continue till 14th June 2006 on condition that the present Market Committee should not take any major policy decision except to incur expenses only for day to day business, and Shri BS Patel, learned advocate appearing for the petitioners has agreed to the same.

[M.R. Shah, J.]

RMR.